

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MR. CARLOS MUHAMMAD	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	NO. 11-7666
	:	
SUPERINTENDENT GERALD L. ROZUM,	:	
and SUPERINTENDENT GEHLMAN,	:	
Respondents.	:	

ORDER

AND NOW this 23rd of February, 2012, upon consideration of the Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by petitioner, Carlos Muhammad (Document No. 1 filed December 15, 2011), the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated January 31, 2012, and the Review of Case Dispositive Motion and Prisoner Litigation 28 U.S.C. 636(b)(1)(B) (Document No. 10, filed February 13, 2012), treated by the Court as Objections to the Report and Recommendation, and the record in this case, and the Rule 591 Motion to Challenge or Withdraw Plea (Document No. 9, filed February 6, 2012), **IT IS ORDERED** as follows:

1. The Report and Recommendation of United States Magistrate Judge Linda K. Caracappa dated January 31, 2012, is **APPROVED** and **ADOPTED**, with the sole **EXCEPTION** that the Petition for Habeas Corpus is dismissed as untimely filed;¹

2. The Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by petitioner, Carlos Muhammad, is **DISMISSED** as **UNTIMELY FILED**;

3. The Review of Case Dispositive Motion and Prisoner Litigation 28 U.S.C. 636(b)(1)(B), treated by the Court as Objections to the Report and Recommendation, is


¹The Report and Recommendation recommended that the Petition be “DENIED AND DISMISSED.”

OVERRULED on the ground that it addresses the merits of petitioner's claims, not the timeliness of the Petition for Writ of Habeas Corpus, which was the basis for the Report and Recommendation. The Report and Recommendation did not address the merits of the Petition as there was no need to do so;

4. Petitioner's Rule 591 Motion to Challenge or Withdraw Plea is **DENIED WITHOUT PREJUDICE** to petitioner's right to present the issues raised in the Motion with the appropriate state court; and,

5. A certificate of appealability will not issue because reasonable jurists would not debate whether the petition states a valid claim of the denial of a constitutional right or this Court's procedural rulings with respect to petitioner's claims. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

BY THE COURT:


JAN E. DUBOIS, J.